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CITY AND COUNTY OF SAN FRANCISCO ET AL.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, ANTONIO FLORES,
DON SLOAN, MARSHA ASHE, and
DOES 1-50, inclusive,

Defendants.

Case No. C 07 2569 CRB

**[PROPOSED] ORDER DENYING
PLAINTIFF'S MOTION FOR
CONTINUANCE UNDER FRCP 56(F)
AND GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: Feb. 22, 2008

Time: 10:00 a.m.

Place: Ctrm. 8, 19th Fl.

1 This matter came on regularly for hearing on February 22, 2008, in Courtroom 8, 19th Fl.,
2 United States District Court, Northern District of California, located at 450 Golden Gate Avenue,
3 San Francisco, California, the Honorable Charles R. Breyer presiding. Margaret W. Baumgartner
4 appeared on behalf of defendants, and John H. Scott appeared on behalf of plaintiff. Having
5 considered the moving, opposition and reply papers and all admissible evidence submitted in
6 support and opposition to the motions, and oral argument, the Court hereby rules as follows:

7 1. The Court hereby DENIES plaintiff Clifford Cook's motion to continue based on Federal
8 Rule of Civil Procedure 56(f). The Court finds that because the discovery requested by plaintiff is
9 not reasonably likely to lead to the discovery of evidence that is essential to decide the issues raised
10 by the motion for partial summary judgment. Specifically, plaintiff has not carried his burden of
11 proving that the facts that plaintiff seeks to discovery will create a dispute of fact regarding whether
12 race was a motivating factor in his arrest.

13 2. The Court hereby GRANTS defendants Marsha Ashe, Donald Sloan and Antonio
14 Flores's motion for partial summary judgment on plaintiff's Second Cause of Action under
15 42 U.S.C. § 1983 based on Equal Protection. The Court finds that plaintiff failed to produce
16 admissible evidence upon which a reasonable trier of fact could conclude that race or the race of his
17 wife were motivating factors in his arrest. Even if plaintiff's evidence could be so read, based on
18 the undisputed facts Captain Ashe, the Commanding Officer who both made the decision to arrest
19 plaintiff and placed him under arrest, had legitimate, non-discriminatory reasons for arresting
20 plaintiff. Plaintiff failed to produce evidence upon which a reasonable trier of fact could conclude
21 that Captain Ashe's motivation for arresting Cook were a pretext for discrimination.

22 Neither Lt. Sloan nor Inspector Flores' arrested plaintiff, nor did their actions result in a
23 deprivation of plaintiff's constitutional rights.

24 Because the court grants defendants' motion on this ground, the issue of qualified immunity
25 is moot.

26 Furthermore, the three individual defendants did not participate in the decision to suspend
27 plaintiff from employment, and therefore no other cause of action states a claim against the
28 individual defendants.

